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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,328	07/02/2001	Masaakira Horino	010830	6708

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EXAMINER

OSTRUP, CLINTON T

ART UNIT	PAPER NUMBER
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1619

DATE MAILED: 01/15/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application N .

09/895,328

Applicant(s)

HORINO, MASAAKIRA

Examin r

Clinton Ostrup

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All   b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

Claims 1-14 are pending in this application.

### ***Priority***

Priority to Japan Application Number 2000-204587, filed July 6, 2000, has been acknowledged.

### ***Specification***

The abstract of the disclosure is objected to because it contains more than one paragraph. Correction is required. See MPEP § 608.01(b).

### ***Claim Objections***

Claim 7 is objected to because a space is missing between "1 "and "or."  
Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5-6, 8, 10, and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 is vague and indefinite because it is unclear whether applicant intends for the clay mineral to be synthetic or not. A claim limitation using the terminology "may be" does not necessitate the presence of the limitation in the claim. In this particular instance, it is unclear if applicant intends for the clay mineral to be synthetic.

The term "low crystalline" in claim 6 is a relative term which renders the claim indefinite. The term "low crystalline " is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear what low crystalline means.

Regarding claim 8, the phrases "scale-like, plate-like, and bar-like" render the claims indefinite because the claims include elements not actually disclosed (those encompassed by "scale-like", "plate-like", and "bar-like"), thereby rendering the scope of the claims unascertainable. See MPEP § 2173.05(d).

Claim 10 is vague and indefinite because it is unclear what the percentages as claimed are based upon. The claim gives percentage amounts of hydroxyapatite and zinc oxide based on the total weight of the substance, hydroxyapatite and zinc oxide. It is unclear if the percentages are based on the total weight of the substance or the total weight of both hydroxyapatite and zinc oxide.

Claim 13 is vague and indefinite because it is unclear what constitutes a sebum-adsorbent agent. Neither the claims, nor the specification, provide an adequate definition of sebum-adsorbent agent and therefore, the metes and bounds of what constitutes a sebum-adsorbent agent are unclear.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 and 9-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakane et al. **5,122,418** (Nakane).

Nakane discloses a composite powder wherein the core powder is covered with one or more powders wherein said composite powder may be used as a skin treatment agent or in sunburn preventing cosmetics, and deodorants. See: col.4, line 51- col. 6, line 11; claims 1-5 and abstract.

Nakane teaches the composite powder having an average particle size of 1 to 100 microns and zinc oxide having an average particle size of 0.01 to 1 microns, thus teaching the zinc oxide and powder sizes of instant claim 9. See: col. 7, line 25 – col. 10, line 44. The reference further teaches that a preferred deodorant composite powder contains a resin powder and hydroxyapatite, zinc oxide, and aluminum hydroxychloride and any other known component such as talc, bentonite, mica, etc., thus meeting the limitations of instant claims 1-2 and 5-6. See: col. 11, line 9 – col. 12, line 25.

The reference teaches that the skin treatment agent of their invention has a superior feel, adsorbs the decomposed sebum and maintains the skin in its normal state, thus teaching instant claim 13. See: col. 12, line 26 - col. 13, line 35.

Therefore, Nakane clearly anticipates instant claims 1-6 and 9-14.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakane et al. **5,122,418** (Nakane) as applied to claims 1-6 and 9-14 above, and further in view of Peterson et al., **6,004,584** (Peterson).

Nakane teaches skin care agents and cosmetics comprising a composite powder covered by hydroxyapatite and zinc oxide as discussed above. Nakane teaches that a spherical particle includes deformed particles. See: col. 1, lines 14-44. However, the primary reference lacks the crystalline size and shape of instant claims 7-8.

Peterson teaches compositions for moisture adsorption comprising spherical particles as well as platelet-shaped particles. See: col. 1, line 5 – col. 2, line 34 and abstract. The reference teaches that the powder carriers of their invention provide good skin feel characteristics and are used where increased levels of moisture absorbers are included in body powders. See: col. 2, line 40 – col. 4, line 11. The secondary reference teaches that zinc oxide is preferably added to the composition as an antimicrobial agent and that mica, talc, etc., are the platelet shaped particles useful in their invention. See: col. 4, lines 35 – 68 and col. 5, line 43 – col. 6, line 4.

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It would have been obvious to one having ordinary skill in the art to have modified the skin treatment powders of Nakane by coating powders with other shapes such as, the platelet shaped particles of Peterson, because of the expectation of obtaining a skin care agent capable of adsorbing moisture with powder carriers which are particularly formulated to provide good skin feel.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clinton Ostrup whose telephone number is (703) 308-3627. The examiner can normally be reached on M-F (8:30am-5:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel can be reached on (703) 308-4725. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Clinton Ostrup  
Examiner  
Art Unit 1614

CTO  
January 11, 2002

FREDERICK KRASS  
PRIMARY EXAMINER  
GROUP 1650



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